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Ventures, Inc. and Steve Vachani

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FACEBOOK, INC.,

Plaintiff,

-against-

POWER VENTURES, INC. d/b/a POWER.COM, a
California corporation; POWER VENTURES, INC.
a Cayman Island Corporation, STEVE VACHANI,
an individual; DOE 1, d/b/a POWER.COM, an
individual and/or business entity of unknown nature;
DOES 2 through 25, inclusive, individuals and/or
business entities of unknown nature,

Defendants.

Case No. 5:08-CV-05780 JW (JCS)

**DECLARATION OF L. TIMOTHY
FISHER, PURSUANT TO CIVIL
L.R. 79-5(D), IN RESPONSE TO
ADMINISTRATIVE MOTIONS TO
FILE UNDER SEAL (DKT. NOS. 168,
171, 174, 185, 187 AND 195)**

1 I, L. Timothy Fisher, declare:

2 1. I am an attorney with the law firm of Bursor & Fisher, P.A. and counsel for
 3 Defendants Power Ventures, Inc. ("Power") and Steve Vachani. I make this declaration in
 4 response to the following motions filed by Facebook: (1) Plaintiff's Administrative Motion for
 5 Sealing Order Pursuant to Civil L.R. 79-5(d) in Connection with Facebook's Motion for Partial
 6 Summary Judgment (**Dkt. No. 168**), (2) Plaintiff's Administrative Motion for Administrative
 7 Relief to File Under Seal, Pursuant to Civil Local Rule 79-5(d) (**Dkt. No. 171**), (3) Plaintiff's
 8 Administrative Motion for Sealing Order Pursuant to Civil L.R. 79-5(d) in Connection with
 9 Facebook's Corrected Motion for Partial Summary Judgment (**Dkt. No. 174**), (4) Plaintiff's
 10 Administrative Motion for Sealing Order Pursuant to Civil L.R. 79-5(d) in Connection with Errata
 11 No. 2 Re Declaration of Lawrence Melling in Support of Facebook's Motion for Partial Summary
 12 Judgment on Count 1 (**Dkt. No. 185**), (5) Plaintiff's Administrative Motion for Sealing Order
 13 Pursuant to Civil L.R. 79-5(d) in Connection with Facebook's Opposition to Defendants' Motion
 14 for Summary Judgment (**Dkt. No. 187**) and (6) Plaintiff's Administrative Motion for Sealing Order
 15 Pursuant to Civil L.R. 79-5(d) in Connection with Facebook's Reply Memorandum in Support of
 16 Facebook's Motions for Partial Summary Judgment Under: 1) on Count 1 the CAN-SPAM Act;
 17 and 2) California Penal Code § 502 and the Computer Fraud and Abuse act, 18 U.S.C. § 1030.
 18 (**Dkt. No. 195**). I have personal knowledge of the facts set forth in this declaration and, if called as
 19 a witness, I could and would testify competently thereto.

20 2. I have reviewed the administrative motions to seal filed by Facebook and listed
 21 above. Having reviewed those motions and the documents referenced therein, defendants request
 22 that the Court seal the document listed below.

23 **The Vachani Deposition Transcript**

24 3. Facebook, Inc.'s motions for partial summary judgment and their opposition to
 25 defendants' motion for summary judgment include portions of the transcript of the July 20, 2011
 26 deposition of Defendant Steve Vachani, which has been designated as Highly Confidential –
 27 Attorneys' Eyes Only.
 28

1 4. Certain portions of the Vachani deposition transcript include references to and
2 discussions of Power's source code.

3 5. The following pages of the Vachani deposition transcript cited in Facebook's briefs
4 include references to Power's highly confidential source code: 259-261 and 266-267. These pages
5 of the Vachani deposition transcript are cited in (1) Exhibit 2 to the Declaration of Monte M.F.
6 Cooper in Support of Facebook, Inc.'s Motion for Partial Summary Judgment on Count 1 under the
7 CAN-SPAM Act and (2) Exhibit 1 to the Declaration of Theresa Sutton in Support of Plaintiff
8 Facebook, Inc.'s Opposition to Defendants' Motion for Summary Judgment.

9 6. Power's source code is a highly confidential part of its business and has been
10 granted special protection under the protective order in place in this case. *See* 2/4/11 Stipulated
11 Protective Order for Standard Litigation at 12-13 (stipulated protective order providing for
12 heightened protection of source code). Defendants could suffer irreparable harm if this
13 information is not protected from public disclosure as it explains the technical details regarding the
14 manner in which Power's proprietary browser functions.

15 **Other Cooper Declaration Exhibits**

16 7. Exhibits 3 and 4 to the Declaration of Monte M.F. Cooper in Support of Facebook,
17 Inc.'s Motion for Partial Summary Judgment on Count 1 under the CAN-SPAM Act are a
18 PowerPoint presentation and an internal memo discussing in detail Power's confidential business
19 plans and strategy.

20 8. Exhibit 9 to the Declaration of Monte M.F. Cooper in Support of Facebook, Inc.'s
21 Motion for Partial Summary Judgment on Count 1 under the CAN-SPAM Act is an email from
22 defendants' counsel to Facebook's counsel explaining how to access and login to Power's online
23 backup and Mr. Vachani's personal email account.

24 9. Power's online backup and Mr. Vachani's email account include extensive
25 information regarding Power's confidential business operations, finances, strategy and plans as
26 well as personal information regarding Mr. Vachani and the people with whom he corresponds.
27 That information is highly sensitive and defendants could suffer irreparable harm if this
28 information is not protected from public disclosure.

The Melling Declarations

10. The November 14, 2011 Declaration of Lawrence Melling in Support of Facebook, Inc.'s Motion for Partial Summary Judgment on Count 1 of the CAN-SPAM Act and December 2, 2011 Declaration of Lawrence Melling in Support of Facebook, Inc.'s Opposition to Defendants' Motion for Summary Judgment also contain numerous references to Power's highly confidential source code. Facebook also submitted Mr. Melling's November 14, 2011 declaration as Exhibit 10 to the November 17, 2011 Declaration of Morvarid Metanat in Support of Facebook, Inc.'s Motion for Partial Summary Judgment Under Penal Code § 502 and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030.

11. The Melling declarations attach excerpts from Power's source code and describe in detail how Power's browser worked and functioned. As described in paragraph six above, information regarding Power's source code and how its browser functioned is highly sensitive, and defendants could suffer irreparable harm if this information is not protected from public disclosure.

Defendants' Sealing Request

12. Defendants therefore respectfully request that the Court seal the following documents:

- Pages 259-261 and 266-267 of the transcript of the deposition of Steve Vachani attached as Exhibit 2 to the Declaration of Monte M.F. Cooper in Support of Facebook, Inc.'s Motion for Partial Summary Judgment on Count 1 under the CAN-SPAM Act.
- Pages 259-261 and 266-267 of the transcript of the deposition of Steve Vachani attached as Exhibit 1 to the Declaration of Theresa Sutton in Support of Plaintiff Facebook, Inc.'s Opposition to Defendants' Motion for Summary Judgment.
- Exhibits 3, 4 and 9 to the Declaration of Monte M.F. Cooper in Support of Facebook, Inc.'s Motion for Partial Summary Judgment on Count 1 under the CAN-SPAM Act.
- The entire November 14, 2011 Declaration of Lawrence Melling in Support of Facebook, Inc.'s Motion for Partial Summary Judgment on Count 1 of the CAN-SPAM Act.

- The entire December 2, 2011 Declaration of Lawrence Melling in Support of Facebook, Inc.'s Opposition to Defendants' Motion for Summary Judgment
- Exhibit 10 to the November 17, 2011 Declaration of Morvarid Metanat in Support of Facebook, Inc.'s Motion for Partial Summary Judgment Under Penal Code § 502 and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed this 13th day of December, 2011, at Walnut Creek, California.



L. Timothy Fisher